

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH DONALD MCCURDY,

No. C 07-05084 CW (PR)

Petitioner,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

v.

BEN CURRY, et al.,

Respondents.

Petitioner has requested appointment of counsel in this
action.

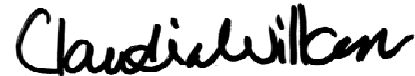
The Sixth Amendment right to counsel does not apply in habeas
corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th
Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes
a district court to appoint counsel to represent a habeas
petitioner whenever "the court determines that the interests of
justice so require" and such person is financially unable to obtain
representation. The decision to appoint counsel is within the
discretion of the district court. See Chaney v. Lewis, 801 F.2d
1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.
Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made
appointment of counsel the exception rather than the rule by

1 limiting it to: (1) capital cases; (2) cases that turn on
2 substantial and complex procedural, legal or mixed legal and
3 factual questions; (3) cases involving uneducated or mentally or
4 physically impaired petitioners; (4) cases likely to require the
5 assistance of experts either in framing or in trying the claims;
6 (5) cases in which petitioner is in no position to investigate
7 crucial facts; and (6) factually complex cases. See generally 1 J.
8 Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure
9 § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
10 when the circumstances of a particular case indicate that appointed
11 counsel is necessary to prevent due process violations. See
12 Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
13 Cir. 1965).

14 The Court finds that appointment of counsel is not warranted
15 in this case. Petitioner's claims are typical claims that arise in
16 criminal appeals and are not especially complex. This is not an
17 exceptional case that would warrant representation on federal
18 habeas review. Therefore, Petitioner's motion for appointment of
19 counsel is DENIED. This denial is without prejudice to the Court's
20 sua sponte reconsideration should the Court find an evidentiary
21 hearing necessary following consideration of the merits of
22 Petitioner's claims.

23 This Order terminates Docket no. 9.

24 IT IS SO ORDERED.



25 Dated: 4/30/08

26 CLAUDIA WILKEN
27 UNITED STATES DISTRICT JUDGE
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KENNETH DONALD MCCURDY,

Case Number: CV07-05084 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

BEN CURRY et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kenneth Donald McCurdy C-76230
California Training Facility
P.O. Box 689
Soledad, CA 93960-0689

Stacey D Schesser
Department of Justice
455 Golden Gate Ave
Suite 11000
San Francisco, CA 94102

Dated: April 30, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California